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Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1991

Addendum

LIECHTENSTEIN

[5 August 1994]

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I. GENERAL INFORMATION

1. Liechtenstein acceded in 1982 to the European Convention on Human Rights, article 3 of which prohibits torture or inhuman or degrading treatment or punishment.

2. Liechtenstein signed on 26 November 1987 and subsequently ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which entered into force for Liechtenstein on 1 January 1992.

3. The Parliament of Liechtenstein gave, on 12 September 1990, authorization of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984 (hereafter referred to as "the Convention"), which had been signed on 27 June 1985. Liechtenstein deposited its instrument of ratification on 2 November 1990 and the text of the Convention, which entered into force for Liechtenstein on 2 December 1990, was published in Liechtenstein on 21 September 1991.

4. Liechtenstein has subscribed to the principle stated in article 5 of the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948.

5. Liechtenstein has committed itself to the mechanism of examination by the Committee established under the provisions of the European Convention against Torture of the treatment of persons deprived of their liberty by means of visits, with a view to strengthening, if necessary, the protection of such persons from torture and from cruel, inhuman or degrading treatment or punishment.

6. When ratifying the Convention, Liechtenstein made the relevant declarations in accordance with articles 21 and 22 of the Convention regarding the competences of the Committee against Torture to receive claims from States parties, as well as from individuals under the jurisdiction of Liechtenstein.

7. In the legal system of Liechtenstein, international law forms an integral part of national law and is directly applicable, provided it lends itself to that purpose. Any person can therefore invoke the legal texts referred to above before the courts and the competent authorities.

8. Any victim of torture or cruel, inhuman or degrading treatment or punishment has the right to bring proceedings against the perpetrator of such acts. Complaints containing such allegations can be lodged with the Government. No such complaints have been lodged during the reporting period.

9. In order to expand and deepen the relationship in the field of legal assistance, Austria and Liechtenstein concluded, on 4 June 1982, a treaty on the accommodation of prisoners, which entered into force on 1 September 1983. According to this treaty, Austria will give, upon request by Liechtenstein, legal assistance by executing imprisonment sentences and preventive measures

pronounced by a Liechtenstein court and accommodate persons who have to be held in custody pursuant to an order by a court of the Principality of Liechtenstein.

10. The practical implementation of the Convention in Liechtenstein is not affected by any difficulties.

II. INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION

Article 1

11. This article defines the term "torture" for the purposes of the Convention and is the first such definition contained in an international instrument. Since there is no definition of the term "torture" in either the Constitution of Liechtenstein or in the relevant legislative texts, the present definition has to be considered valid in Liechtenstein since the entry into force of the Convention.

Article 2

Paragraph 1

12. Protection against torture and similar acts is guaranteed by the Constitution, article 33, paragraph 2 of which reads as follows: "Nobody may be threatened with or subjected to penalties other than those provided by the laws". This right can be invoked by any individual under the jurisdiction of Liechtenstein.

13. Torture and cruel, inhuman or degrading treatment or punishment are punishable under the Penal Code of Liechtenstein by virtue either of reference to wilful infliction of bodily harm (paras. 83-89) or of provisions regarding the treatment of prisoners (para. 312). Paragraph 312 of the Penal Code reads as follows:

> "(1) An official who inflicts physical or mental suffering on a detainee or on any other person held in custody upon official order, a person under his authority or a person to whom he has access in the performance of his duties, shall be punished with imprisonment up to two years.
>
> "(2) Likewise, an official shall be punished, who grossly neglects his duty of care or custody towards such a person and has thus, even if only through negligence, impaired considerably the health or physical or mental development of this person.
>
> "(3) If the act committed results in grievous bodily harm [as defined in the relevant provisions of the Penal Code], the perpetrator shall be punished with imprisonment up to three years, if it results in bodily harm with grave and lasting consequences [as defined in the relevant provisions of the Penal Code], with imprisonment up to five years, if it results in the death of the injured person, the perpetrator shall be punished with imprisonment up to ten years."

14. Other cases covered by the Convention are dealt with under the provisions of the Penal Code designed to protect physical integrity, which have been referred to above.

Paragraphs 2 and 3

15. These provisions are, in accordance with the legal system of Liechtenstein, directly applicable and therefore do not require any specific legislative measures.

Article 3

16. This provision is also directly applicable under Liechtenstein law. Due to certain difficulties in practice, however, discussions on drafting a law on the granting of asylum are currently being undertaken.

Article 4

Paragraph 1

17. All acts of torture are offences under the criminal law of Liechtenstein according to the provisions referred to in paragraph 11. Paragraph 12 of the Penal Code stipulates the following: "A punishable act is not only committed by its immediate perpetrator, but also by any person who induces another person to commit such an act or in any other way contributes to the commission of the act".

18. Paragraphs 12 and 312 of the Penal Code thus ensure that complicity or participation in acts of torture is an offence under criminal law.

19. Paragraph 15 of the Penal Code stipulates the following:

> "(1) The penalties for intentional acts apply not only to the offence committed, but also to an attempt to commit an offence and any participation in the event.
>
> "(2) Attempt exists when the perpetrator shows his intention to commit an offence or to cause another person to do so [cf. paragraph 12 referred to above] by committing an act immediately prior thereto.
>
> "(3) Attempt and participation in an attempt are not punishable, when the offence could not have been completed under any circumstances due to a lack of personal capacities or when the conditions required by law for an act did not exist or due to the nature of the act or the purpose of the offence."

20. Paragraphs 15 and 312 of the Penal Code thus ensure that attempts to commit any acts of torture are an offence under criminal law.

Paragraph 2

21. Consequently, attempts to commit torture and any act constituting participation or complicity in acts of torture are punishable in accordance with paragraph 312 of the Penal Code.

Article 5

22. For punishable acts committed abroad, paragraph 64 of the Penal Code stipulates the following:

> "(1) According to Liechtenstein criminal law, the following acts committed abroad are subject to penalties, independently of the criminal laws of the place, where the offence was committed:
>
> "...
>
> "(6) Other punishable criminal acts which Liechtenstein is obliged to prosecute, even when they have been committed abroad, independently of the criminal laws of the place, where the offence was committed."

23. Given the direct applicability of the provisions of the Convention, those contained in article 5 have to be considered such an obligation. Paragraph 64.1.6 of the Penal Code and article 5 of the Convention together thus ensure the fulfilment of the provisions contained in article 5.

Article 6

Paragraphs 1 and 2

24. The provisions contained in these paragraphs did not require specific legislative measures, since they are directly applicable in Liechtenstein law. Violations of the prohibition of torture are prosecuted by the competent judicial authorities in accordance with the provisions of the Penal Code as well as with those of the Convention and other relevant international instruments having entered into force for Liechtenstein.

25. With regard to the period of time during which a person alleged to have committed an offence referred to in article 4 is to be held in custody, article 16 of the European Convention on Extradition of 1957, which entered into force for Liechtenstein on 26 January 1970, is relevant. Paragraph 3 of this article provides that provisional arrest may be terminated if, within a period of 18 days after arrest, the requested party has not received the request for extradition; that period shall not, in any event, exceed 40 days from the date of arrest.

Paragraph 3

26. According to article 135 of the Code of Criminal Procedure, any person held in temporary custody is authorized to communicate with any person through writing as well as by receiving visits of such persons, in a way and to an extent which do not have a negative impact on the ongoing inquiry. Under any

circumstances, a person held in temporary custody is entitled to communicate in writing with the national courts, other national authorities or the European Commission of Human Rights.

27. National legislation does not contain any specific provision regarding the contact with representatives of the State of which a person held in custody is a national. It has to be pointed out, however, that this is covered by article 36, paragraphs 1(b) and (c) and 2, of the Vienna Convention on Consular Relations of 24 April 1963, which entered into force for Liechtenstein on 19 March 1967:

> "1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
>
> "...
>
> "(b) if he [i.e. the person concerned] so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
>
> "(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment... .
>
> "2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended."

28. It should be added that the provisions of this article also apply to nationals of States which have not ratified the Vienna Convention on Consular Relations.

29. For the purposes of the Convention, stateless persons are equated with nationals of the State where they usually reside.

Paragraph 4

30. The provision contained in this paragraph is directly applicable and the authorities conducting an inquiry are therefore bound to act in the manner indicated in this paragraph.

Article 7

Paragraph 1

31. This paragraph emanates directly from article 5, paragraph 2, and is directly applicable under Liechtenstein law. It does therefore not require any specific comments.

Paragraph 2

32. As stated above in the comments under article 4, acts of torture constitute offences of a serious nature under Liechtenstein law. Accordingly, they can only be treated as such by the competent authorities.

33. The standards of evidence required for prosecution are independent of the grounds on which persecution is undertaken.

Paragraph 3

34. Any person facing any charge is entitled to fair treatment at all stages of the proceedings, regardless of the nature of the offence brought against him. This is guaranteed by national law as well as by international law, particularly article 6 of the European Convention on Human Rights, which is directly applicable in Liechtenstein.

Article 8

35. As pointed out in the comments under article 6, Liechtenstein is a State party to the European Convention on Extradition of 1957. In addition, it concluded, on 4 June 1982, a treaty with Austria in order to facilitate the application of the European Convention.

36. Liechtenstein also concluded bilateral treaties on extradition with the United States of America and Belgium in the year 1936.

Paragraphs 1 and 2

37. This provision is directly applicable and complements the existing extradition treaties referred to above. Since the entry into force of the Convention, this provision can thus be considered as the legal basis for extradition in respect of offences referred to under article 4 between States parties to the Convention and therefore serve as an extradition treaty.

38. Since the entry into force of the Convention, Liechtenstein has not concluded any bilateral treaties on extradition.

Paragraphs 3 and 4

39. These provisions are directly applicable and do not require any specific legislative measures.

Article 9

40. Again, this provision is directly applicable under Liechtenstein law and does not require any further measures for implementation. In addition, it should be pointed out that Liechtenstein is, since 26 January 1970, State party to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959. It has also concluded, on 4 June 1982, a treaty with Austria in order to complement the European Convention and to facilitate its application.

41. Liechtenstein has not concluded any other bilateral treaties regarding mutual assistance in criminal matters.

Article 10

42. As in other fields of human rights, information and education are indispensable elements for ensuring the prohibition of torture. Liechtenstein's civil police forces are trained for three months in the area of the treatment of prisoners and other persons held in custody. This training includes studies of the relevant international law like the Convention and the European Convention on Human Rights, as well as of pertinent national legislation such as the Penal Code and the Code of Criminal Procedure.

43. Liechtenstein does not have an army or any military forces.

44. Study of relevant international law such as the Convention, as well as of the Penal Code, and the Code of Criminal Procedure, obviously forms part of the training of magistrates, judges and lawyers.

45. No cases of persons having been subjected to torture or any other form of cruel, inhuman or degrading punishment or treatment in Liechtenstein have occurred during the reporting period or in the preceding years. In practice, the aspect of continuous prevention of torture thus prevails over the combat against torture.

46. No specific training of medical personnel has been initiated so far. Given the fact that the aftereffects of torture in the psychological field are especially serious, persons who have become victims of torture would be given psychological assistance.

Article 11

47. The preparatory steps for ratification of the Convention have included a review of interrogation rules, instructions, methods and practices, as stipulated in this article. The result of this review was that there are no legal provisions or administrative instructions which might be interpreted as allowing torture or in any other way impeding the implementation of the Convention.

48. Article 151 of the Law on Penal Procedure reads as follows: "Neither promises nor delusions, threats or coercive measures may be used in order to induce the charged person to confess or to make certain other assertions".

49. Article 8, paragraph 2, of the Law on Execution of Sentences stipulates the following: "The human dignity of the detained person is to be respected and protected".

50. Since the entry into force for Liechtenstein, on 1 January 1992, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987, the European Committee for the Prevention of Torture is entitled to visit prison establishments. Such a visit took place from 14-16 April 1993, and the pertinent report was adopted by the European Committee on the Prevention of Torture on 3 December 1993. The recommendations of the Committee contained in this report are currently being considered by the competent authorities.

Article 12

51. This provision is directly applicable and could, given the necessity, serve as the legal basis for proceeding to an investigation and, if necessary, to a judicial investigation. Investigations of allegations of torture would have to be conducted by a court, since the violation of the prohibition against torture is a criminal offence. No relevant cases have occurred during the reporting period.

Article 13

52. Article 43 of the Constitution of Liechtenstein stipulates the following: "The right of complaint is guaranteed. Any citizen shall be entitled to lodge a complaint regarding any action or procedure on the part of some public authority which is contrary to the Constitution, the laws or the official regulations and detrimental to his rights or interests. Such complaint shall be addressed to that authority which is immediately superior to the authority concerned, and may, if necessary, be pursued to the highest authority, except in so far as the right of recourse may be barred by a legal restriction. If a complaint thus submitted is rejected by the superior authority, the latter shall be bound to declare to the complaining party the reasons for its decision".

53. The right to lodge a complaint regarding acts of torture, which are prohibited by law, is thus guaranteed by the Consitution.

54. In accordance with article 6.1 and article 13 of the European Convention on Human Rights, this guarantee applies not only to nationals of Liechtenstein, but to any individual under its jurisdiction.

55. Article 42 of the Law on Execution of Sentences stipulates the following: "The detained person can lodge a complaint against any decision or order affecting his rights or against any behaviour of the executive personnel affecting his rights". In addition, article 9, paragraph 2, provides that: "The detained person is apprised of his rights and duties".

56. In accordance with article 93 of the Constitution, the Government is responsible for supervising the treatment of persons detained in custody and prisoners.

57. Article 239, paragraph 2, of the Law on Penal Procedure reads as follows: "Complaints against detention, prolongation of imprisonment, undue treatment of the detained person ... have to be dealt with by the President of the Supreme Court, acting as a single judge, as a matter of urgency. If the persons do not acquiesce in the decision of the President of the Supreme Court, they have the possibility to ask that a decision on their complaint be taken by the Supreme Court as a whole".

58. The provision contained in article 13 of the Convention has not been applied during the reporting period.

59. Protection against all ill-treatment or intimidation is guaranteed by the Constitution in article 33, paragraph 2.

Article 14

Paragraph 1

60. Article 32, paragraph 3, of the Constitution reads as follows: "Persons arrested unlawfully or when obviously innocent, and those who are proved innocent after having been convicted, shall be entitled to full compensation from the State up to an amount to be determined by the courts ..."

61. This constitutional provision also applies, in practice, to personal freedom and physical integrity. The State thus bears responsibility for compensating victims of torture.

62. As made clear in the quoted article of the Constitution, the amount of compensation in such cases is to be set by the court, which would base itself, when making a decision, on article 14 as a directly applicable legal provision.

63. The responsibility of the State for compensation is also guaranteed under the terms of the Law on Official Liability of 1966, article 3 of which reads as follows: "Official authorities are liable for the damage, which persons that act as their organs inflict upon a third person while executing their official duties".

64. Article 60 (b) of the same text stipulates: "The provisions of this law shall be applied to claims to compensation for killing or injury proven to be contrary to law".

65. Due to the fact that no cases of torture have occurred during the reporting period as well as in the years before, no specific programmes of rehabilitation for victims of torture exist. Victims of torture would, besides a financial compensation, be given medical and psychological assistance.

66. The provision contained in article 14 has not been applied during the reporting period.

Paragraph 2

67. There are no other provisions under national law regarding the rights of victims of torture or other persons to compensation.

Article 15

68. Reference can be made to the provision quoted under the comments under article 11.

69. This provision is directly applicable and therefore to be considered as the legal basis of inadmissibility of any statement established to have been made as a result of torture. No specific legislative measures have therefore been taken.

Article 16

Paragraph 1

70. Since the provisions under national law, which were referred to above, do not use the term "torture", but are held in more general terms, it is clear that any other acts similar to those defined in article 1 of the Convention are equally covered by these provisions.

Paragraph 2

71. The fact that the provisions of the Convention are without prejudice to those of any other pertinent international instrument or national legislation does not cause any problems of interpretation or implementation.